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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,090	10/03/2003	James Bennett	101USBB02	3536

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EXAMINER	
PANDYA, SUNIT	
ART UNIT	**PAPER NUMBER**
3714	

MAIL DATE	DELIVERY MODE
10/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/679,090	BENNETT, JAMES	
	Examiner	Art Unit	
	Sunit Pandya	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 2, 5, 6, 8-15, 18 & 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Diamond et al. (U.S. Patent Number 5,314,336).**

Referring to claims 1, 25, Diamond et al. discloses receiving at least one event by an audio enabled toy (detected optical symbol); selecting from within said audio enabled toy, plurality of phoneme from a first removable storage of said audio enabled toy that corresponds to said at least one received event (for example, column 1 lines 51-53), said plurality of phonemes comprises phonemes for non-native language that are not in common with phonemes with any of the phonemes for native language (column 5 lines 6-15 wherein the different languages disclosed by Diamond et al. could be non-native language); and generating within said audio enabled toy, an audio representation of selected plurality of phoneme (for example, column 1 lines 49 & 50).

Referring to claim 2, Diamond et al. discloses further comprising playing from within said audio enabled toy, said generated audio representation of plurality of phoneme (for example, column 1 lines 49 & 50).

Referring to claims 5, 18, 22 & 24, Diamond et al. discloses multiple removable storages, wherein the first removable storage and second removable storage comprises plurality of phonemes partially different from each other (abstract & column 4 line 56 – column 5 line 15).

Referring to claims 6 & 19, Diamond et al. discloses first storage (column 4 line 56 – column 5 line 15) further comprising selecting from within said audio enabled toy, plurality of phoneme from at least two removable storages simultaneously coupled to said audio enabled toy (Fig. 5: memory 57 & the associated text and column 4 line 56 – column 5 line 15).

Referring to claim 8, Diamond et al. discloses wherein said received at least one event is at least one of a motion trigger, a sound trigger (the examiner views this limitation as what activates the audio playback means) and a button trigger.

Referring to claims 9 & 28, Diamond et al. discloses receiving at least one triggering event by an audio enabled toy (detected optical symbol); and generating from within said audio enabled toy, audio signals representative of: a plurality of phonemes for at least one non-native language said plurality of phonemes comprises phonemes for non-native language that are not in common with phonemes with any of the phonemes for native language (column 5 lines 6-15 wherein the different languages disclosed by Diamond et al. could be non-native language).

Referring to claim 10, Diamond et al. discloses further comprising playing from within said audio enabled toy, sound corresponding to said generated audio signals (audio playback means).

Referring to claim 11, Diamond et al. disclose generating audio signals representative of a plurality of phonemes for native language (column 5 lines 6-15 wherein the different languages disclosed by Diamond et al. could be native language).

Referring to claim 12, Diamond et al. discloses receiving at least one triggering event by an audio enabled toy (detected optical signal); and generating by said audio enabled toy, audio signals representative of phonemes for a non-native language (column 4 line 56 - column 5 line 15), wherein at least a portion of said phonemes for said non-native language comprises phonemes that are not in common with any phonemes of a native language (column 5 lines 6-15 wherein the different languages disclosed by Diamond et al. could be non-native language).

Referring to claim 13, Diamond et al. discloses comprising playing from within said audio enabled toy, sound corresponding to said generated audio signals (audio playback means).

Referring to claim 14, Diamond et al. discloses a trigger unit that receives at least one event by an audio enabled toy (the examiner views this limitation as what activates the audio playback means); an audio processing unit that selects from within said audio enabled toy, a plurality of phonemes from a first storage of said audio enabled toy that corresponds to said at least one received event (for example, column 1 lines 51-53), said plurality of phonemes comprising phonemes for one non-native language that are

not in common with any of plurality of phonemes for a native language (column 5 lines 6-15 wherein the different languages disclosed by Diamond et al. could be non-native language); and said audio processing unit generates within said audio enable toy, an audio representation of said plurality of phonemes (for example, column 1 lines 49 & 50).

Referring to claim 15, Diamond et al. discloses wherein said audio processing unit plays from within said audio enabled toy, said generated audio representation of said selected plurality of phonemes (audio processing means) and said received at least one event is at least one of a motion trigger, a sound trigger and a button trigger (the examiner views this limitation as what activates the audio playback means).

Referring to claims 21, 23, 27 & 30, Diamond et al. discloses plurality of phonemes for a native language (column 5 lines 6-15 wherein the different languages disclosed by Diamond et al. could be native language).

Referring to claim 26 & 29, Diamond et al. discloses a speaker for playing sound corresponding to generated audio signals (figure 1, element 11).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 3, 7, 16 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. in view of Maa (U.S. Patent Number 6,572,431).**

Referring to claims 3 & 16, Diamond et al. substantially discloses the invention as claimed, including selecting from within said audio enabled toy, at least one of voice type corresponding to an infant, a toddler, a teenager, an adult, a male and a female for said playing of said generated audio representation (column 5 lines 16-18). Diamond et al. however does not disclose adjusting from within said audio enabled toy, at least one of a duration, a pitch, a volume and a speed of said playing of said generated audio representation. Maa, however, teaches of adjusting from within said audio enabled toy, at least one of a duration, a pitch, a volume and a speed of said playing of said generated audio representation (column 13 lines 24-28). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include adjusting from within said audio enabled toy, at least one of a duration, a pitch, a volume and a speed of said playing of said generated audio representation, as disclosed by Maa, incorporated into Diamond et al. in order to alter the characteristics of its audio output.

Referring to claims 7 & 20, Diamond et al. substantially discloses the invention as claimed. Diamond et al. however does not discloses further comprising downloading from within an audio enabled toy, plurality of phonemes from at least one of a remote server, a remote storage and a personal computer, said downloading occurring via at least one of a wired and a wireless interface. However, Maa teaches downloading from within an audio enabled toy, plurality of phonemes from at least one of remote server, a remote storage and a personal computer (Fig. 1 & column 3 lines 47-53), said

downloading occurring via at least one of a wired and a wireless interface (Fig. 1 & column 3 lines 57-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include downloading, as disclosed by Maa, incorporated into Diamond et al. in order to control the sound of the toy.

5. **Claims 4 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al. in view of Lyberg (U.S. Patent Number 5,752,227).**

Referring to claims 4 & 17, Diamond et al. substantially discloses the invention as claimed however, Diamond et al. does not disclose further comprising excluding a plurality of phonemes for native language prior to playing. However, Lyberg teaches excluding a plurality of phonemes that are native language prior to playing (column 8 lines 22-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include excluding a plurality of phonemes that are native language prior to playing, as disclosed by Lyberg, incorporated into Diamond et al. so that the phonemes that do not occur in a particular language are omitted.

Response to Arguments

With regards to this action, the finality of the previous action has been withdrawn by the examiner, due to inconsistency on the holdings between the current examiner and the previous examiner. With regards to the applicant submitted arguments, the examiner requests' that the applicant makes the proposed changes discussed in the interview on August 16, 2007.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunit Pandya whose telephone number is 571-272-2823. The examiner can normally be reached on 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SP

Robert Pezzuto
Supervisory Patent Examiner
3714